IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE THIRTEENTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

**THE HON'BLE MR JUSTICE S.ANANDA REDDY**

**WRIT PETITION NO : 7724 of 2004**

Between:

Kishan Bhaiyya, S/o Late Laxminarayan,
R/o Poonam Apartments, 3rd Floor, Abids, Hyderabad.

**..... PETITIONER**

AND

1 Commissioner of City Police, Bhaseerbagh, Hyderabad.
2 P.S.Narayanaguda, Hyderabad.

**.....RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, Order or direction, more particularly in the nature of Writ of Mandamus, declaring the inaction of the respondents for not making any enquiry on my complaints dated 26-3-2004, 29-3-2004, and 13-4-2004 of P.S.Narayanaguda, as illegal, unlawful, arbitrary and ultra virus under Articles 14 and 19 of Constitution of India

**Counsel for the Petitioner: MR.R.SATYANARAYANA REDDY**

**For the Respondents: GP FOR HOME**

**The Court at the stage of admission made the following:**

ORDER:

1. This writ petition is filed by the petitioner seeking issuance of writ of Mandamus declaring the inaction of the respondents in making an enquiry on the petitioner's complaints dated 26-03-2004, 29-03-2004 and 13-04-2004 as illegal, arbitrary and violative under Articles 14 and 19 of the Constitution of India.

2. According to the petitioner, he is a licensed moneylender and carrying on money lending business. The petitioner is a handicapped person surviving with one leg and also suffering with all serious ailments such as diabetic, hypertension and heart ailments. The husband of the de-facto complainant is also one of the petitioner's customers, who used to avail hand loans to meet his business necessities on interest and repays the same on short term basis. It is stated that the de-facto complainant-Smt. Kiran Bansal, W/o Rakesh Kumar Bansal, lodged a complaint on 26-03-2004 before the second respondent against the petitioner and three others, alleging that they had forcibly taken away her husband from her flat on 25-03-2004 at about 11.30 p.m. and she does not know the whereabouts of her husband. She further alleged in her complaint that the petitioner and others have insisted her husband to do business with the petitioner, but he refused. She also made further allegations that the petitioner had obtained signatures of her husband on blank papers, promissory note and stamp papers etc., but the same were not returned in spite of repayment of the loan amount. On the basis of the complaint dated 26-03-2004, the second respondent registered a case under Section 365 I.P.C. and issued F.I.R. in Crime No.249 of 2004 and the matter has been taken up for investigation. On the very same day, i.e., 26-03-2004, the second respondent summoned the petitioner and his staff members to the Police Station and informed the petitioner about

the said complaint, for which the petitioner explained the real facts of the case in detail i.e., regarding the loan availed by the husband of the de-facto complainant etc., and stated that the said complaint was lodged by the de-facto complainant to avoid repayment of the loan. It is further stated by the petitioner that he has been attending the P.S. of second respondent and cooperating to trace the husband of the de-facto complainant. It is also stated that as on the date of the said complaint, the husband of the de-facto complainant was liable to pay a sum of Rs.2,40,000/- to the petitioner towards hand loan which was obtained by him on 09-06-2003 and in turn he gave six post dated cheques on the very same day drawn on HDFC Bank, branch at Lakadi ka pool, Hyderabad, and asked the petitioner to encash three cheques on 31-03-2004 and the remaining three cheques be encashed by the end of April, 2004 and in the meanwhile, he would arrange payment in his account. It is further stated that as per the promise of the husband of the de-facto complainant, the petitioner sent his driver on 25-03-2004 to the husband of the de-facto complainant to remind him about the due date of cheques and also to inform him in advance that the petitioner is going to present the first three cheques on 31-03-2004 for encashment of a part of loan amount and with a request to make arrangement to keep sufficient amount in his account. But the husband of the de-facto complainant was not available in his flat, hence, the driver of the petitioner informed the de-facto complainant to inform the same to her husband with regard to presentation of the three cheques on 31-03-2004. But, on the very next day i.e., on 26-03-2004 at 10-30 a.m. a Constable of the second respondent came and took the petitioner and his staff members to the Police Station where they were examined by the second respondent in the presence of the de-facto complainant. Even though she could not furnish the correct information about the disappearance of her husband, she gave all inconsistent statements. It is stated that the second respondent deliberately and wantonly avoided to investigate the matter and report the same to his higher officials even though the petitioner narrated about the visit of his driver to the house of the de-facto complainant and intimation about

the presentation of the cheques. According to the petitioner, the de-facto complainant and her husband lodged a complaint to mislead the Police machinery and with an intention to escape from the cheque bounce proceedings. It is also stated that on account of the inaction on the part of the second respondent, the petitioner lodged complaint on 26-03-2004 and reminders to the superior Officers i.e., the Assistant Commissioner of Police, Hydeabad, and the Commissioner of City Police, Hyderabad on 29-03-2004 and 13-04-2004 respectively and as no action has been taken up even by the higher officials, the petitioner has come up with the present writ petition. In fact in the affidavit itself, the petitioner sought reference of the matter to the Central Crimes Station (C.C.S.) for investigation.

3. Respondents filed a counter-affidavit disputing the allegations made by the petitioner and stated that based on the complaint before the second respondent P.S., filed by Smt. Kiran Bansal, W/o Rakesh Kumar Bansal, alleging kidnap of her husband on the intervening night of 25/26-03-2004 at about 12.30 midnight against the petitioner and four others, a case was registered in Crime No.249 of 2004 under Section 365 I.P.C. and investigation was taken up. It is also stated that on 07-04-2004 the husband of the de-facto complainant was reportedly admitted in Apollo Hospital, Hyderabad, and the Investigating Officer examined him and recorded his statement on the same day. In his statement, the husband of the de-facto complainant stated that his signatures were forcibly taken on blank papers at the petitioner's office and he was beaten till he became unconscious and thereafter he was taken to Amberpet Lal Building and there also he was beaten till he became unconscious and the kidnappers left him only at 6.30 a.m., on 07-04-2004 at old M.L.A. quarters, Hyderguda, Hyderabad, and went away. Therefore, in the counter, it is stated that as the investigation is in progress and no case has been made out for entrusting the investigation to the Central Crimes Station (C.C.S.).

4. At the time of hearing, learned Counsel for the petitioner contended that apart from the original complaint filed by the petitioner denying and disputing the averments made in the complaint filed by the de-

facto complainant alleging kidnap of her husband against the petitioner and others, as there was no proper and expedite enquiry into the matter, the petitioner also filed reminders before the higher officials for completion of investigation in Crime No.249 of 2004. As the investigation has not been completed as sought for by the petitioner, the petitioner had come up with the present writ petition. Learned Counsel further contended that the de-facto complainant and her husband are likely to take up the stand that the petitioner and his staff members forcibly took the signatures of the husband of the de-facto complainant on the blank papers as defence if the petitioner initiates a case under Section 138 of the Negotiable Instruments Act. Therefore, the respondents ought to have expedited and completed the investigation and taken appropriate action against the complainant.

5. Heard both sides and considered the material on record.

6 . *Prima facie* no case is made out by the petitioner for invoking jurisdiction under Article 226 of the Constitution of India for indulgence of this Court. In fact the complaint alleging kidnap was made by the de-facto complainant and the same is under investigation. It is not the case of the petitioner that petitioner and others are being harassed and in any way treated badly in view of the complaint filed by the de-facto complainant. The demeanor of the petitioner shows that he wants to know each and every step of investigation and he should be informed about the same, that is the purpose for which he made complaint and further reminders to the higher officials. Except the petitioner taking the stand that he is no way involved with the alleged kidnap of the husband of the de-facto complainant, there is no other material available on record. Hence, it is for the Investigating Officer to inquire into and file report basing on his investigation, but it is not for the petitioner to file petitions complaining that his complaints were not investigated. In fact the petitioner wants to take action against the de-facto complainant even when the complaint made by the de-facto complainant is still under investigation. The demeanor of the petitioner also shows that he

wants to pre-empt the de-facto complainant as well as the officer investigating the complaint of the de-facto complainant from taking further action, by making complaints to the Station House Officer against the de-facto complainant and to the higher officials against the Station House Officer and further not being satisfied with the above, he approached this Court. This conduct of the petitioner is clearly illegal apart from misuse of the judicial process to create suspicion not only against the de-facto complainant but also against the Station House Officer.

7. In the above circumstances, the writ petition is clearly devoid of merits and the same is accordingly dismissed. The second respondent/S.H.O., however, is directed to complete the investigation in Crime No.249 of 2004 and file necessary report before the concerned Magistrate expeditiously.

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13-07-2004

ghn/kvh

To

1. Commissioner of City Police, Bhaseerbagh, Hyderabad.
2. S.H.O., P.S.Narayanaguda, Hyderabad.
3. Two C.C.s to Government Pleader for Home, High Court of A.P., Hyderabad.(o.u.t.)
4. Two C.Ds. copies